

REFERENCE TITLE: ASRS; retirement average monthly salary

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

# HB 2115

Introduced by  
Representative Boone

AN ACT

AMENDING SECTION 38-711, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION;  
RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to  
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,  
7 subdivision (b) of this section who satisfies the eligibility criteria  
8 prescribed in section 38-727 and who is currently making member contributions  
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate  
11 amounts expected to be received under two different forms of payment, based  
12 on mortality and interest rate assumptions approved from time to time by the  
13 board.

14 3. "ASRS" means the Arizona state retirement system established by  
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,  
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,  
20 1984 and who left the member's contributions on deposit or reinstated  
21 forfeited credited service pursuant to section 38-742 for a period of  
22 employment that commenced before January 1, 1984, THE HIGHER OF EITHER:

23 (i) THE MONTHLY AVERAGE OF COMPENSATION THAT IS CALCULATED PURSUANT TO  
24 SUBDIVISION (b) OF THIS PARAGRAPH.

25 (ii) The monthly average of compensation on which contributions were  
26 remitted during a period of sixty consecutive months during which the member  
27 receives the highest compensation within the last one hundred twenty months  
28 of credited service. Any month for which no contributions are reported to  
29 ASRS or that falls within a period of nonpaid or partially paid leave of  
30 absence or sabbatical leave shall be excluded from the computation. The  
31 sixty consecutive months may entirely precede, may be both before and after  
32 or may be completely after any excluded months. If the member was employed  
33 for less than sixty consecutive months, the average monthly compensation is  
34 based on the total consecutive months worked. Payments for accumulated  
35 vacation or annual leave, sick leave, compensatory time or other forms of  
36 termination pay which, before August 12, 2005, constitute compensation for  
37 members whose membership in ASRS commenced before January 1, 1984, do not  
38 cease to be included as compensation if paid in the form of nonelective  
39 employer contributions under a 26 United States Code section 403(b) plan if  
40 all payments of employer and employee contributions are made at the time of  
41 termination. Contributions shall be made to ASRS on these amounts pursuant  
42 to sections 38-735, 38-736 and 38-737.

43 (b) ~~Effective July 1, 1985~~ FOR A MEMBER WHOSE MEMBERSHIP IN ASRS  
44 COMMENCED ON OR AFTER JANUARY 1, 1984 BUT BEFORE JULY 1, 2010, the monthly  
45 average of compensation on which contributions were remitted during a period

1 of thirty-six consecutive months during which a member receives the highest  
2 compensation within the last one hundred twenty months of credited service.  
3 Any month for which no contributions are reported to ASRS or that falls  
4 within a period of nonpaid or partially paid leave of absence or sabbatical  
5 leave shall be excluded from the computation. The thirty-six consecutive  
6 months may entirely precede, may be both before and after or may be  
7 completely after any excluded months. If the member was employed for less  
8 than thirty-six consecutive months, the average monthly compensation shall be  
9 based on the total consecutive months worked. ~~This subdivision applies only  
10 to members whose membership in ASRS was effective after December 31, 1983 or  
11 who agree in writing as a binding condition of eligibility for being granted  
12 the benefit advantages available under this subdivision to have their benefit  
13 computed on the basis of the definition of compensation.~~

14 (c) FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JULY  
15 1, 2010, THE MONTHLY AVERAGE OF COMPENSATION ON WHICH CONTRIBUTIONS WERE  
16 REMITTED DURING A PERIOD OF SIXTY CONSECUTIVE MONTHS DURING WHICH A MEMBER  
17 RECEIVES THE HIGHEST COMPENSATION WITHIN THE LAST ONE HUNDRED TWENTY MONTHS  
18 OF CREDITED SERVICE. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE REPORTED TO  
19 ASRS OR THAT FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID LEAVE OF  
20 ABSENCE OR SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION. THE  
21 SIXTY CONSECUTIVE MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE AND AFTER  
22 OR MAY BE COMPLETELY AFTER ANY EXCLUDED MONTHS. IF THE MEMBER WAS EMPLOYED  
23 FOR LESS THAN SIXTY CONSECUTIVE MONTHS, THE AVERAGE MONTHLY COMPENSATION  
24 SHALL BE BASED ON THE TOTAL CONSECUTIVE MONTHS WORKED.

25 6. "Board" means the ASRS board established in section 38-713.

26 7. "Compensation" means the gross amount paid to a member by an  
27 employer as salary or wages, including amounts that are subject to deferred  
28 compensation or tax shelter agreements, for services rendered to or for an  
29 employer, or that would have been paid to the member except for the member's  
30 election or a legal requirement that all or part of the gross amount be used  
31 for other purposes, but does not include amounts paid in excess of  
32 compensation limits established in section 38-746. Compensation includes  
33 amounts paid as salary or wages to a member by a second employer.  
34 Compensation, as provided in paragraph 5, subdivision (b) of this section,  
35 does not include:

36 (a) Lump sum payments, on termination of employment, for accumulated  
37 vacation or annual leave, sick leave, compensatory time or any other form of  
38 termination pay whether the payments are made in one payment or by  
39 installments over a period of time.

40 (b) Damages, costs, attorney fees, interest or other penalties paid  
41 pursuant to a court order or a compromise settlement or agreement to satisfy  
42 a grievance or claim even though the amount of the payment is based in whole  
43 or in part on previous salary or wage levels, except that, if the court order  
44 or compromise settlement or agreement directs salary or wages to be paid for  
45 a specific period of time, the payment is compensation for that specific

1 period of time. If the amount directed to be paid is less than the actual  
2 salary or wages that would have been paid for the period if service had been  
3 performed, the contributions for the period shall be based on the amount of  
4 compensation that would have been paid if the service had been performed.

5 (c) Payment, at the member's option, in lieu of fringe benefits that  
6 are normally paid for or provided by the employer.

7 (d) Merit awards pursuant to section 38-613 and performance bonuses  
8 paid to assistant attorneys general pursuant to section 41-192.

9 8. "Contingent annuitant" means the person named by a member to  
10 receive retirement income payable following a member's death after retirement  
11 as provided in section 38-760.

12 9. "Credited service" means, subject to section 38-739, the number of  
13 years standing to the member's credit on the books of ASRS during which the  
14 member made the required contributions.

15 10. "Current annual compensation" means the greater of:

16 (a) Annualized compensation of the typical pay period amount  
17 immediately before the date of a request to ASRS to purchase credited service  
18 pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount  
19 shall be determined by taking the five pay periods immediately before the  
20 date of a request, disregarding the highest and lowest compensation amount  
21 pay periods and averaging the three remaining pay periods.

22 (b) Annualized compensation of the partial year, disregarding the  
23 first compensation amount pay period, if the member has less than twelve  
24 months total credited service on the date of a request to purchase credited  
25 service pursuant to section 38-743, 38-744 or 38-745.

26 (c) The sum of the twelve months of compensation immediately before  
27 the date of a request to ASRS to purchase credited service pursuant to  
28 section 38-743, 38-744 or 38-745.

29 (d) The sum of the thirty-six months of compensation immediately  
30 before the date of a request to ASRS to purchase credited service pursuant to  
31 section 38-743, 38-744 or 38-745 divided by three.

32 (e) If the member has retired one or more times from ASRS, the average  
33 monthly compensation that was used for calculating the member's last pension  
34 benefit times twelve.

35 11. "Early retirement" means retirement before a member's normal  
36 retirement date after five years of total credited service and attainment of  
37 age fifty.

38 12. "Effective date" means July 1, 1970, except with respect to  
39 employers and members whose contributions to ASRS commence thereafter, the  
40 effective date of their membership in ASRS is as specified in the applicable  
41 joinder agreement.

42 13. "Employer" means:

43 (a) This state.

44 (b) Participating political subdivisions.

45 (c) Participating political subdivision entities.

1       14. "Employer contributions" means all amounts paid into ASRS by an  
2 employer on behalf of a member.

3       15. "Fiscal year" means the period from July 1 of any year to June 30  
4 of the following year.

5       16. "Inactive member" means a member who previously made contributions  
6 to ASRS and who satisfies each of the following:

7           (a) Has not retired.

8           (b) Is not eligible for active membership in ASRS.

9           (c) Is not currently making contributions to ASRS.

10          (d) Has not withdrawn contributions from ASRS.

11       17. "Interest" means the assumed actuarial investment earnings rate  
12 approved by the board.

13       18. "Internal revenue code" means the United States internal revenue  
14 code of 1986, as amended.

15       19. "Investment management" means the persons, companies, banks,  
16 insurance company investment funds, mutual fund companies, management or any  
17 combinations of those entities that are appointed by ASRS and that have  
18 responsibility and authority for investment of the monies of ASRS.

19       20. "Late retirement" means retirement after normal retirement.

20       21. "Leave of absence" means any unpaid leave authorized by the  
21 employer, including leaves authorized for sickness or disability or to pursue  
22 education or training.

23       22. "Life annuity" means equal monthly installments payable during the  
24 member's lifetime after retirement.

25       23. "Member":

26           (a) Means any employee of an employer on the effective date.

27           (b) Means all employees of an employer who are eligible for membership  
28 pursuant to section 38-727 and who are engaged to work at least twenty weeks  
29 in each fiscal year and at least twenty hours each week.

30           (c) Means any person receiving a benefit under ASRS.

31           (d) Means any person who is a former active member of ASRS and who has  
32 not withdrawn contributions from ASRS pursuant to section 38-740.

33           (e) Does not include any employee of an employer who is otherwise  
34 eligible pursuant to this article and who begins service in a limited  
35 appointment for not more than eighteen months on or after July 1, 1979. If  
36 the employment exceeds eighteen months, the employee shall be covered by ASRS  
37 as of the beginning of the nineteenth month of employment. In order to be  
38 excluded under this subdivision, classifications of employees designated by  
39 employers as limited appointments must be approved by the director.

40           (f) Does not include any leased employee. For the purposes of section  
41 414(n) of the internal revenue code, "leased employee" means an individual  
42 who:

43           (i) Is not otherwise an employee of an employer.

1           (ii) Pursuant to a leasing agreement between the employer and another  
2 person, performs services for the employer on a substantially full-time basis  
3 for at least one year.

4           (iii) Performs services under the primary direction or control of the  
5 employer.

6           24. "Member contributions" means all amounts paid to ASRS by a member.

7           25. "Normal costs" means the sum of the individual normal costs for all  
8 active members for each fiscal year. The normal cost for an individual  
9 active member is the cost that is assigned to the fiscal year using the  
10 projected unit credit method.

11          26. "Normal retirement age" means the age at which a member reaches the  
12 member's normal retirement date.

13          27. "Normal retirement date" means the earliest of the following:

14           (a) A member's sixty-fifth birthday.

15           (b) A member's sixty-second birthday and completion of at least ten  
16 years of credited service.

17           (c) The first day that the sum of a member's age and years of total  
18 credited service equals eighty.

19          28. "Political subdivision" means any political subdivision of this  
20 state and includes a political subdivision entity.

21          29. "Political subdivision entity" means an entity:

22           (a) That is located in this state.

23           (b) That is created in whole or in part by political subdivisions,  
24 including instrumentalities of political subdivisions.

25           (c) Where a majority of the membership of the entity is composed of  
26 political subdivisions.

27           (d) Whose primary purpose is the performance of a government related  
28 service.

29          30. "Retired member" means a member who is receiving retirement  
30 benefits pursuant to this article.

31          31. "Service year" means fiscal year, except that:

32           (a) If the normal work year required of a member is less than the full  
33 fiscal year but is for a period of at least nine months, the service year is  
34 the normal work year.

35           (b) For a salaried member employed on a contract basis under one  
36 contract, or two or more consecutive contracts, for a total period of at  
37 least nine months, the service year is the total period of the contract or  
38 consecutive contracts.

39           (c) In determining average monthly compensation pursuant to paragraph  
40 5 of this section, the service year is considered to be twelve months of  
41 compensation.

42          32. "State" means this state, including any department, office, board,  
43 commission, agency, institution or other instrumentality of this state.

44          33. "Vested" means that a member is eligible to receive a future  
45 retirement benefit.

1           Sec. 2. Appropriation: Arizona state retirement system:  
2                 exemption

3           A. The sum of \$763,319 is appropriated from the Arizona state  
4 retirement system account in fiscal year 2009-2010 to the Arizona state  
5 retirement system for administrative implementation of this act.

6           B. The appropriation made in subsection A of this section is exempt  
7 from the provisions of section 35-190, Arizona Revised Statutes, relating to  
8 lapsing of appropriations.